

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-187391

DATE: November 15, 1976

MATTER OF: Newport Ship Yard, Inc.

DIGEST:

1. Protest that IFB overstated foreseeable costs to be added to bids from protester's region in bid evaluation is untimely, since it was not filed prior to bid opening.
2. Contracting agency's determination that Government will not incur significant foreseeable costs in addition to bid price if award is made to low bidder has reasonable basis and will not be disturbed.
3. Fact that third low bidder under present Navy solicitation recently was awarded Navy contract under similar procurement is not basis to make award under present IFB to such firm. ASPR § 2-407.5(iii) authorizes consideration of possible advantages to Government that might result from making more than one award under single solicitation.

Invitation for bids (IFB) number N62678-76-B-0137 was issued on August 10, 1976, by the United States Navy, Naval Sea Systems Command, for various repairs on three landing crafts. Amendment number 1 to the IFB advised bidders that foreseeable costs would be applied to bids from three geographic regions as follows:

New Bern, North Carolina	\$40,143
Newport, Rhode Island	39,999
Port Everglades, Florida	40,476

Bids were opened on September 8. Although Newport Ship Yard, Inc. (Newport), of Newport, Rhode Island, submitted the lowest bid price of \$668,560, the addition of the applicable foreseeable costs of \$39,999 resulted in a total bid price of \$708,559. The bid price submitted by Braswell Shipyards, Inc., of Charleston, South Carolina, of \$673,625, was not subject to the addition of foreseeable costs, and was the low total bid price received.

Newport protests the proposed award by the Navy to Braswell. Newport argues that the foreseeable costs made applicable by the IFB to bids from Newport, Rhode Island, were overstated; that acceptance of bids from areas other than the three listed in the IFB to which foreseeable costs are applicable is "arbitrary and discriminatory"; and that the Navy will in fact incur foreseeable costs if award is made to Braswell, and such costs should have been indicated in the solicitation and considered in the evaluation of Braswell's bid. In addition, Newport states that on October 19 it was awarded a contract by the Navy for repair work to landing craft similar to those involved here. Newport contends:

"* * * NAVSEA failed to quote ASPR 2-407.5(iii) which requires the contracting officer to determine what advantages or disadvantages flow to the government by making multiple awards * * * [H]ad NAVSEA followed the requirements of ASPR 2-407.5(iii) they would have to determine that our company was the low responsible bidder under the IFB and that the Navy would be afforded the added advantage of both the cost of shipping the boats under two contracts to one shipyard and further that the performance of work to a total of seven LCM's [landing craft] would be accomplished at one shipyard."

Concerning Newport's argument that the IFB overstated the foreseeable costs applicable to Newport, Rhode Island, section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2 (1976), provides in part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

Since the amount of foreseeable costs applicable to Newport, Rhode Island, was stated in the solicitation, Newport's argument that such amount was in error should have been filed prior to the September 8 bid opening. Accordingly, the protest, filed in our Office on September 10, is untimely on that issue.

In regard to Newport's second and third contentions, Armed Services Procurement Regulation (ASPR) § 2-407.5 (1976 ed.) provides in pertinent part:

"The factors set forth in (i) through (vi) below, among others, may be considered in evaluating bids.

- "(i) Foreseeable costs or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc. * * *"

That regulation essentially reflects the view of our Office that a determination of the low responsive bidder under an advertised procurement may properly include consideration of costs in addition to the bid price which the Government would incur in the event of an award to each bidder if the amount of such costs can be ascertained with reasonable certainty. See 45 Comp. Gen. 59, 68 (1965). Accordingly, under appropriate circumstances, it is proper for an agency to issue an IFB to a number of potential bidders and provide therein that the evaluation of certain of the responding bids will include the addition of indicated foreseeable costs. Moreover, the determination whether foreseeable costs would be incurred upon award to certain bidders is, logically, for the contracting agency. Cf. 36 Comp. Gen. 380, 386 (1956). In this connection, the Navy states:

"* * * foreseeable costs were applied to bidders located in three locations; however, bidders located in other regions, such as Boston, Charleston and Norfolk were not assessed any foreseeable costs. This resulted because in the latter three locations there exists a SUPSHIP office, which means personnel working in that office can be dispatched on a daily basis to a contractor in the approximate vicinity of the SUPSHIP without any significant foreseeable costs arising. However, since there are no SUPSHIP offices in the vicinity of New Bern, Newport or Port Everglades, should a contractor in one of those locations be the successful bidder, the Navy would be required to send its surveyors and other personnel to a job site that is beyond the normal commuting distance for such personnel, with the result that travel and per diem costs will be incurred. That is why no foreseeable costs were added to the bids of contractors in three locations, while bidders in other locations had foreseeable costs of approximately \$40,000. This was a result of

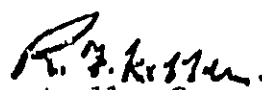
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geography, but there was nothing arbitrary or capricious in that approach."

In view of the stated basis for assessing foreseeable costs, we cannot say that the determination not to add such costs to bids from Braswell's location was improper.

Finally, in regard to the argument that, since Newport recently was awarded a contract by the Navy under a similar procurement, award to that firm is required by ASPR § 2-407.5(iii) (1976 ed.), the cited regulation authorizes consideration of possible advantages to the Government that might result from making more than one award under a single solicitation. It does not, therefore, apply to the present situation in the manner argued by Newport. In any case, the October 19 award by the Navy to Newport can have no effect on the agency's determination of the low bid under the present procurement, since such determination must be based on the bids as they appeared at the September 8 bid opening. See James and Stritzke Construction Company, 54 Comp. Gen. 159 (1974), 74-2 CPD 128.

In view of the above, the protest is denied.


Acting Comptroller General
of the United States